

FILED

AUG 30 2012

IN THE UNITED STATES DISTRICT COURT

PATRICK E. DUFFY, CLERK
By _____
DEPUTY CLERK, MISSOULA

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

UNITED STATES OF AMERICA,

Cause No. CR 11-05-H-DWM

CV 12-66-H-DWM

Plaintiff/Respondent,

vs.

ORDER DENYING MOTION
TO RECONSIDER AND DENYING
CERTIFICATE OF APPEALABILITY

PATRICK LOUIS ASTORE,

Defendant/Movant.

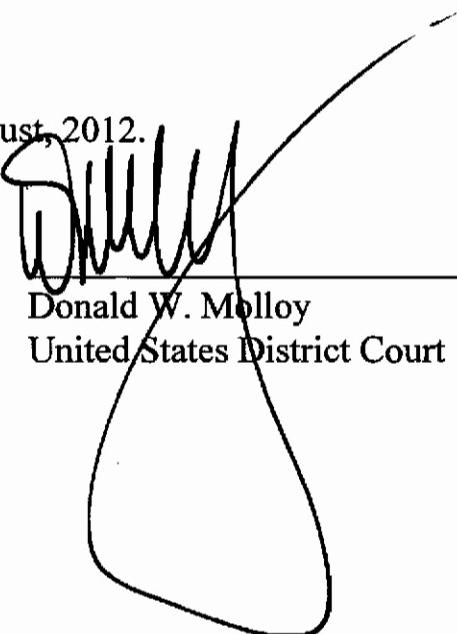
On July 10, 2012, Defendant /Movant Patrick Astore, a federal prisoner proceeding pro se, moved to vacate, set aside, or correct his sentence, pursuant to 28 U.S.C. § 2255. The motion and a certificate of appealability were denied on July 19, 2012.

On August 10, 2012, Astore filed a motion for reconsideration. As he repeats the arguments made in his motion, it is in effect a second or successive motion and this Court lacks jurisdiction to consider it. *Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005); *Burton v. Stewart*, 540 U.S. 147, 149 (2007) (per curiam). It is dismissed.

A certificate of appealability is denied because the motion here is plainly controlled by *Gonzalez* and *Burton* and because Astore does not make a substantial showing that he was deprived of a constitutional right. 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

Accordingly, IT IS HEREBY ORDERED that Astore's motion for reconsideration (doc. 35) is DISMISSED for lack of jurisdiction and a certificate of appealability is DENIED.

DATED this 30th day of August, 2012.


Donald W. Molloy
United States District Court